IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.6206 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HARIJAN AJESI AKHA

Versus

SARPANCH, SANVAL GROUP GRAM PANCHYAT

Appearance:

1. Special Civil Application No. 6206 of 2004

MR AM PAREKH for Petitioner Nos.1-31

MR HP RAVAL for Respondent No.1

..... for respondent No.2

MR KUNJAL PANDYA AGP for Respondent Nos. 3-4

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 21/06/2004

ORAL JUDGEMENT

RULE. Mr.H.P.Raval, learned advocate appears and waives service of rule on behalf of respondent No.1 and Mr.Kunjal Pandya, learned A.G.P., waives service of rule

on behalf of respondent Nos.3 and 4. Though served, none appears on behalf of respondent No.2. With consent of the parties, the matter is taken up for final hearing today.

2. The petitioners have challenged the action of the respondent - Sanval Group Gram Panchayat, Village Sanval, in exercising powers under Section 105[1] of the Gujarat Panchayats Act, 1993.

3. Heard Mr.A.M.Parekh, learned advocate appearing on behalf of the petitioners, Mr.H.P.Raval, learned advocate, for respondent No.1 - Gram Panchayat and Mr.Kunjal Pandya, learned A.G.P. on behalf of respondent Nos.3 and 4.

4. The petitioners are claiming to be occupiers and in possession of various lands in nature of Vada and Gauchar lands within the limits of Sanval Group Gram Panchayat (hereinafter referred to as 'the Panchayat'). It is the case of the petitioners that they are in occupation for last more than about 20 years and pursuant to applications made for regularization of their occupation and possession to the Government, the Government has granted some land on permanent lease. It is also the case of the petitioners that they have been paying taxes to the Panchayat and the petitioners have produced copies of receipts, showing payment of taxes as well as agreements in nature of Kabulatnama.

5. On being inquired as to why the notice has been issued to the petitioners by the Panchayat, taking action under Section 105[1] of the Panchayats Act, 1993, Mr.Raval has brought to the attention of this Court the order dated 15.04.2004 rendered in Special Civil Application No.4636 of 2004 filed by one Raxaben Mafatlal Sanghvi, whereby the Panchayat was required to look into the grievances made by the petitioner of the said petition and to take suitable and appropriate action. The said writ petition was disposed without issuance of notice to any of the respondents. Also, it would be relevant to note that in the said petition, though the said petitioner has made grievance of illegal occupation and encroachment by certain persons, none as alleged encroachers were parties to the petition, as having not been arrayed as respondents. Be that as it may, I have perused the order in the said petition, which is produced by the learned Advocate Mr.Raval on behalf of the Panchayat. On going through it, it cannot be said that it was intention of this Court while disposing of the said writ petition, that there would be action against

any alleged encroachers without complying with the principles of natural justice. Even otherwise, as the petitioners herein have alleged to be in occupation and possession of the land for more than 20 years and have also asserted their right to continue in occupation and possession on the basis of their applications for regularization, and they have been granted by the Government on permanent lease, it is a matter of controversy based on facts which cannot be decided in a petition under Article 226 of the Constitution of India.

Ultimately, it is for the Gram Panchayat concerned to consider the case of the petitioners and later on to take a decision as to whether petitioners are entitled to continue to occupy the lands which they are occupying. Such decision will obviously be required to be taken in consonance with principles of natural justice since the petitioners are also asserting and contending that they have obtained permission for putting up construction. All these exercise is required to be done by the Gram Panchayat before proceeding to take any action under Section 105 or on the basis of notice challenged in the present petition, which is termed as order by the petitioners. It is the case of the petitioners that the Panchayat has given final direction while exercising the powers under Section 105[1] of the Panchayats Act without affording an opportunity of hearing and without passing any orders or issuing any notice. On inquiry being made, the Gram Panchayat has fairly admitted that no notice prior to the present one was ever issued to any of the petitioners nor any hearing was granted.

6. In the above view of the matter, the following directions will meet with the end of the justice :-

(i) that the notice impugned in the present petition issued under Section 105[1] of the Gujarat Panchayats Act, 1993, and which is termed as order by the petitioners shall be treated as show-cause notice;

(ii) As all the petitioners have already filed their reply to the Gram Panchayat, Mr.Parekh states that the same may be treated as reply to the show-cause notice which is impugned in the present petition.

(iii) the Panchayat then shall dispose of objections raised by the petitioners or deal with the reply after granting a reasonable opportunity of being heard;

(iv) since the petitioners are large in number it is agreed that the petitioner No.6 Barot Tagaji Ladhaji be treated as a representative of respondents, who shall be entitled to be heard on behalf of the petitioners;

(v) after considering the reply and the material produced at the hearing, the Panchayat shall then decide the controversy in accordance with law and on merits;

(vi) till such decision is arrived at, no adverse action shall be taken by the respondent - Gram Panchayat against the petitioners on the basis of the impugned notice, till a fresh decision is rendered as directed hereinabove and the said decision shall not be implemented for a period of 15 days thereafter. The respondent Panchayat is directed to take a decision on or before 21-07-2004.

7. Subject to the above observations and directions, this petition stands disposed of. Rule made absolute accordingly. There shall be no order as to costs. Direct service permitted.

Sd/-

[M.R.SHAH, J]

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'Bhavesh'